

TENNESSEE GENERAL ASSEMBLY
FISCAL REVIEW COMMITTEE



FISCAL NOTE

HB 2837 - SB 2699

March 9, 2012

SUMMARY OF BILL: Removes the confidentiality requirements of certain documents submitted to the State in response to a request for proposal or other procurement method after completion of the evaluation period.

ESTIMATED FISCAL IMPACT:

Other Fiscal Impact – Due to a number of unknown factors, a direct fiscal impact cannot be quantified. It is estimated that any fiscal impact directly related to the state’s ability to procure a contract for pharmacy benefit manager services will not occur until FY13-14 at the earliest based on the termination date of the current contract.

Assumptions:

- Currently, the following documents and information must remain confidential after completion of the evaluation period of a request for proposal or other procurement method: (1) discount, rebate, pricing, or other financial arrangements at the individual drug level between pharmaceutical manufacturers, pharmaceutical wholesalers/distributors, and pharmacy benefits managers; and (2) discount, rebate, pricing, or other financial arrangements at the individual provider level between health care providers and health insurance entities, insurers, insurance arrangements, and third party administrators.
- According to the Department of Finance and Administration (F&A), the provisions of the bill could limit the State’s ability to conduct effective, price sensitive procurements for the state sponsored public sector health plans which could result in increased benefit payments. Increased benefit payments will result in higher premiums or reduced benefits. If benefit payments and premiums increase for the state sponsored public sector health plans, there could be a fiscal impact to the state, local education agencies, and local governments that opt into the plans.
- Due to a number of unknown factors, the exact fiscal impact cannot be quantified.
- The proposed legislation deletes statutory provisions that became effective March 31, 2010. The current pharmacy benefit manager (PBM) contract became effective February 19, 2010. The contract term ends June 30, 2015. Yearly rates are included in the current contract through December 31, 2014. Since the contract was effective prior to the implementation of the confidentiality requirements, these requirements would not have

had a direct impact on the current rates that were negotiated by the state in procuring this contract.

- Based on the information provided by F&A, the confidentiality requirements affect the state's ability to procure a PBM contract by impacting the number of companies that will bid and the rate negotiation process. Based on the effective date of the current contract, any impact incurred will not be realized until FY14-15 or FY15-16.
- The transparency of certain information between pharmaceutical manufacturers, pharmaceutical wholesalers/distributors, and pharmacy benefits managers, as well as between providers and health insurance entities, insurers, insurance arrangements, and third party administrators, could also have a positive impact. The information could provide a more competitive nature between PBM vendors which may lead to better rates and rebates for the state sponsored health plans.
- Transparency may also provide greater accuracy in the information used by the state contracted actuary during audits of the state sponsored health plans and vendors.
- Any change to the rates and rebates of the states sponsored health plans will directly impact state and local expenditures. Due to a number of unknown factors, including the impact to future bid processes, the impact to the state's ability to negotiate rates, the impact to the competitive nature of rates between private companies, and the impact of more accurate information for auditing purposes, the direct fiscal impact to the state sponsored health plans due to removing the confidentiality requirements of certain information related to pharmaceutical and health benefit contracts cannot be quantified.
- According to the Bureau of TennCare, confidentiality of TennCare pharmacy rebates are protected under Tenn. Code Ann. § 71-5-197 and does not rely on the exemption provided in Tenn. Code Ann. § 10-7-504; therefore, this will not impact the TennCare program.
- Based on information provided by the Department of Commerce and Insurance, any changes to current departmental procedures regarding the confidentiality requirements of information will not result in a significant fiscal impact.

CERTIFICATION:

The information contained herein is true and correct to the best of my knowledge.



Lucian D. Geise, Executive Director

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